

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Charis Jones	Team: Squad #3	CCRB Case #: 202102508	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 02/20/2021 1:02 AM	Location of Incident: In front of 905 White Plains Road	Precinct: 43	18 Mo. SOL 8/20/2022	EO SOL 8/20/2022	
Date/Time CV Reported Thu, 04/22/2021 6:23 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 04/22/2021 6:23 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Gerson Cabrera	00574	948727	043 PCT
2. POM Kenneth Flynn	09381	959639	043 PCT
3. PO Alejandro Ochoa	17600	955267	043 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Gerson Cabrera	Abuse: Sergeant Gerson Cabrera stopped the vehicle in which § 87(2)(b) § 87(2)(b) and individuals were occupants.	
B.SGT Gerson Cabrera	Abuse: Sergeant Gerson Cabrera questioned § 87(2)(b)	
C.SGT Gerson Cabrera	Abuse: Sergeant Gerson Cabrera questioned individuals.	
D.SGT Gerson Cabrera	Abuse: Sergeant Gerson Cabrera frisked an individual.	
E.SGT Gerson Cabrera	Abuse: Sergeant Gerson Cabrera searched an individual.	
F.SGT Gerson Cabrera	Abuse: Sergeant Gerson Cabrera frisked § 87(2)(b)	
G.SGT Gerson Cabrera	Abuse: Sergeant Gerson Cabrera searched § 87(2)(b)	
H.PO Alejandro Ochoa	Abuse: Police Officer Alejandro Ochoa frisked an individual.	
I.POM Kenneth Flynn	Abuse: Police Officer Kenneth Flynn frisked an individual.	
J.PO Alejandro Ochoa	Abuse: Police Officer Alejandro Ochoa searched the vehicle in which § 87(2)(b) § 87(2)(b) and individuals were occupants.	
K.POM Kenneth Flynn	Abuse: Police Officer Kenneth Flynn threatened to seize an individual's property.	
L.POM Kenneth Flynn	Abuse: Police Officer Kenneth Flynn threatened to issue summons to an individual.	
M.POM Kenneth Flynn	Abuse: Police Officer Kenneth Flynn interfered with an individual's use of a recording device.	
N.SGT Gerson Cabrera	Abuse: Sergeant Gerson Cabrera failed to provide individuals with business cards.	
O.SGT Gerson Cabrera	Abuse: Sergeant Gerson Cabrera failed to provide § 87(2)(b) with a business card.	

Officer(s)	Allegation	Investigator Recommendation
P.SGT Gerson Cabrera	Abuse: Sergeant Gerson Cabrera failed to provide § 87(2)(b) with a business card.	
Q.PO Alejandro Ochoa	Abuse: Police Officer Alejandro Ochoa failed to provide individuals with business cards.	
R.PO Alejandro Ochoa	Abuse: Police Officer Alejandro Ochoa failed to provide § 87(2)(b) with a business card.	
S.PO Alejandro Ochoa	Abuse: Police Officer Alejandro Ochoa failed to provide § 87(2)(b) with a business card.	
T.POM Kenneth Flynn	Abuse: Police Officer Kenneth Flynn failed to provide individuals with business cards.	
U.POM Kenneth Flynn	Abuse: Police Officer Kenneth Flynn failed to provide § 87(2)(b) with a business card.	
V.POM Kenneth Flynn	Abuse: Police Officer Kenneth Flynn failed to provide § 87(2)(b) with a business card.	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

## Case Summary

On April 22, 2021, § 87(2)(b) called the CCRB and filed this complaint with the undersigned on behalf of himself, § 87(2)(b) and three of his friends, all of whom are unidentified but are referred to as CV1, CV2, and CV3.

On February 20, 2021, at approximately 1:02 a.m., at 905 White Plains Road in the Bronx, Police Officer Alejandro Ochoa, Police Officer Kenneth Flynn, and Sergeant Gerson Cabrera of the 43<sup>rd</sup> Precinct stopped the vehicle in which § 87(2)(b) § 87(2)(b) CV1, CV2, and CV3 were occupants (**Allegation A: Abuse of Authority,** § 87(2)(g))

Sgt. Cabrera questioned § 87(2)(b) CV1, CV2, and CV3 (**Allegations B and C: Abuse of Authority, § 87(2)(g)** § 87(2)(g) Sgt. Cabrera frisked and searched CV1 (**Allegations D and E: Abuse of Authority, § 87(2)(g)** § 87(2)(g) Sgt. Cabrera frisked and searched § 87(2)(b) § 87(2)(b) (**Allegations F and G: Abuse of Authority, § 87(2)(g)** § 87(2)(g) PO Ochoa frisked CV2 (**Allegations H: Abuse of Authority, § 87(2)(g)** § 87(2)(g) PO Flynn frisked CV3 (**Allegation I: Abuse of Authority, § 87(2)(g)** § 87(2)(g) PO Ochoa searched the vehicle in which § 87(2)(b) § 87(2)(b) CV1, CV2, and CV3 were occupants (**Allegation J: Abuse of Authority, § 87(2)(g)** § 87(2)(g) PO Flynn threatened to seize CV1's property, issue him a summons, and interfered with his recording device (**Allegations K-M: Abuse of Authority, § 87(2)(g)** § 87(2)(g) PO Ochoa, Sgt. Cabrera, and PO Flynn failed to provide their business cards to § 87(2)(b) § 87(2)(b) CV1, CV2, and CV3 (**Allegations N-V: Abuse of Authority, § 87(2)(g)** § 87(2)(g)

**§ 87(2)(g), § 87(4-b)**

No arrests were made, nor any summons issued as a result of this incident.

The investigation obtained the body-worn camera (BWC) footage from PO Ochoa, Sgt. Cabrera, and PO Flynn, which captured this incident in its entirety (Board Review 01-03).

## **Findings and Recommendations**

**Allegation (A) Abuse of Authority: Sergeant Gerson Cabrera stopped the vehicle in which § 87(2)(b) and individuals were occupants.**

§ 87(2)(b) (Board Review 04) testified that he was going to get something to eat with CV1, CV2, and CV3 and that he called an Uber to pick them up. The Uber driver, identified by the investigation as § 87(2)(b) picked them up in front of § 87(2)(b) in the Bronx at 12:56 a.m. As § 87(2)(b) got into the Uber, he observed an unmarked vehicle stop at the light located at the intersection of Lafayette Avenue and White Plains Road. § 87(2)(b) CV1, CV2, and CV3 go into the Uber, sat next to each other in the back passenger seats, and drove away. Simultaneously, the same unmarked vehicle made a right onto White Plains Road, passed the Uber in the opposite direction, made a U-turn, and deployed its lights and sirens. The Uber pulled over in front of 905 White Plains Road. Three officers, identified by the investigation as PO Ochoa, Sgt. Cabrera, and PO Flynn, exited the unmarked vehicle and approached the Uber. Once they were at the vehicle, The officers asked § 87(2)(b) and his friends to step out. § 87(2)(b) said, “For what?” The officers did not respond to § 87(2)(b) PO Ochoa asked § 87(2)(b) for his driver’s license, which § 87(2)(b) produced. PO Ochoa looked at § 87(2)(b) driver’s license and handed it back to him. The officers asked § 87(2)(b) and his friends to step out of the vehicle again. § 87(2)(b) asked the officers

a second time, “For what?” PO Ochoa responded that it was because the § 87(2)(b) made a U-turn.

§ 87(2)(b) declined to provide the investigation with the names and contact information for CV1, CV2, and CV3. Thus, the CCRB was unable to identify CV1, CV2, and CV2 and obtain statements from them. § 87(2)(b) provided the investigation with a screenshot of his Uber ride from the night of the incident, which contained identifying information for the Uber vehicle and driver, § 87(2)(b) (Board Review 05). As a result, the CCRB was able to identify and obtain a phone statement from § 87(2)(b)

§ 87(2)(b) (Board Review 06) testified that he picked up § 87(2)(b) and his three friends that had requested to be driven to a restaurant. Approximately two minutes after picking up § 87(2)(b) and his friends, the police stopped § 87(2)(b) vehicle. The officers informed § 87(2)(b) that he had made an illegal U-turn, which he acknowledged doing.

PO Ochoa, Sgt. Cabrera, and PO Flynn (Board Review 06) all testified that they observed § 87(2)(b) make a U-turn on White Plains Road and that it was a collective decision to stop the vehicle for the infraction. Sgt. Cabrera noted that no summons was issued for the moving violation because the officers decided to exercise their discretion.

New York State Vehicle and Traffic Law Section 1161 states that no motor vehicle shall make a U turn upon any curve, or upon the approach to, or near the crest of a grade, where such motor vehicle cannot be seen by the driver of any other motor vehicle while approaching from either direction within five hundred feet (Board Review 09).

§ 87(2)(b) and the officer’s testimonies were consistent regarding § 87(2)(b) making a U-turn prior to being stopped. § 87(2)(g)

**Allegation (B) Abuse of Authority: Sergeant Gerson Cabrera questioned § 87(2)(b)**  
**Allegation (C) Abuse of Authority: Sergeant Gerson Cabrera questioned individuals.**  
**Allegation (D) Abuse of Authority: Sergeant Gerson Cabrera frisked an individual.**  
**Allegation (E) Abuse of Authority: Sergeant Gerson Cabrera searched an individual.**  
**Allegation (F) Abuse of Authority: Sergeant Gerson Cabrera frisked § 87(2)(b)**  
**Allegation (G) Abuse of Authority: Sergeant Gerson Cabrera searched § 87(2)(b)**  
**Allegation (H) Abuse of Authority: Police Officer Alejandro Ochoa frisked an individual.**  
**Allegation (I) Abuse of Authority: Police Officer Kenneth Flynn frisked an individual.**  
**Allegation (J) Abuse of Authority: Police Officer Alejandro Ochoa searched the vehicle in which § 87(2)(b) § 87(2)(b) and individuals were occupants.**

§ 87(2)(b) (Board Review 04) stated that at the time of incident, he had keys that were possibly in his jacket pockets as well as two phones, and some loose dollar bills in his pants pockets. § 87(2)(b) CV1, CV2, and CV3 exited the vehicle after PO Ochoa ordered them to do so. Sgt. Cabrera frisked § 87(2)(b) pants pockets, waist area, his ankles, his jacket pockets, and down his arms. Sgt. Cabrera did not search § 87(2)(b) Sgt. Cabrera also frisked CV1 who was also seated in the back passenger seat. PO Ochoa and Sgt. Cabrera frisked § 87(2)(b) CV1, CV2, and CV3 while PO Flynn watched. § 87(2)(b) could not recall for certain which officers frisked himself and his friends. After § 87(2)(b) CV1, CV2, and CV3 were frisked, the officers ordered them to stand at the rear of the vehicle. The officers did not ask § 87(2)(b) to step out of the vehicle nor did they frisk or search his person. One of the officers searched the back seat area of the Uber while the other two stood with § 87(2)(b) CV1, CV2, and CV3 at the rear of the vehicle. After the officers finished searching the Uber vehicle, the officers told them to re-enter the vehicle. They re-entered the Uber and drove

away from the location.

§ 87(2)(b) (Board Review 05) testified that he did not smell marijuana in his vehicle or emanating from the passengers once they got into his car, he did not observe marijuana in his vehicle, and he did not hear the passengers discuss having marijuana with them. The officers asked the passengers if they had smoked. The passengers were angry at the questions and spoke amongst themselves, however, § 87(2)(b) could not understand what they were saying. The officers then asked § 87(2)(b) CV1, CV2, and CV3 to step out of the vehicle. The passengers stepped out of the vehicle and the officers frisked and searched them. After the officers searched the passengers, they let them go. The officers did not recover anything from their searches. One of the officers searched the back passenger seat area and the front passenger seat area of § 87(2)(b) vehicle. During the search, the officer asked § 87(2)(b) if the passengers had left anything inside. § 87(2)(b) told the officer that he did not observe them leave anything. The officer gave § 87(2)(b) his license at the end of the incident. § 87(2)(b) was not issued a summons or given any paperwork.

Although § 87(2)(b) alleged that PO Ochoa and Sgt. Cabrera frisked himself, CV1, CV2, and CV3 while PO Flynn watched, the BWC footage shows that Sgt. Cabrera frisked CV1, frisked and searched § 87(2)(b) that PO Ochoa frisked CV2, and that PO Flynn frisked CV3. Thus, these corresponding allegations were pleaded against the respective officer. The BWC also captured PO Ochoa searching the vehicle and thus the vehicle search allegation was pleaded against him. Sgt. Cabrera's search of CV1 was not captured on BWC or alleged by § 87(2)(b) but is being pleaded based on Sgt. Cabrera's affirmation that he performed this action.

PO Ochoa's BWC, which is approximately 07:10 minutes in length, depicts the entirety of his involvement in the incident (Board Review 01). At 00:51, PO Ochoa exits the police vehicle and approaches the Uber on the driver's side. At 01:09, CV1 rolls down the back passenger seat window on the driver's side and says, "Yo, bro. What's going on? What happened?" § 87(2)(b) is seated in the back passenger seat between CV1 and CV2. § 87(2)(b) rolls down his window as well PO Ochoa says, "What happened?" PO Ochoa asks for § 87(2)(b) license and registration. CV1 says, "You see four of us in an Uber and it's like what's going on...What's the problem?" At 01:22, CV3, who is seated in the front passenger seat says, "Why ya pulling niggas over for-for what?" CV1 says to Sgt. Cabrera, who is standing at the back passenger side behind the driver's seat, "I'm not gonna lie, I feel like you pulled me over twice in the past two weeks." CV3 leans over from the front passenger side towards the driver's side and says to PO Ochoa, "What did he do, though?" PO Ochoa responds, "Are you his lawyer? I will explain as soon as I get his information." CV1 and CV3 say, respectively, "He didn't do nothing." At 01:41, PO Ochoa says, "Have you guys been drinking tonight?" CV1 says, "Huh, what'd you say?" PO Ochoa responds, "A little drinking?" CV3 says, "No." CV1 says to PO Ochoa, "Bro, I'm about keep it a hundred, I'm about to get some food, go to my crib, and fuck my bitch." At 01:55, CV3 says, "How do you pull someone over and not give them a logical explanation." § 87(2)(b) simultaneously hands PO Ochoa his identification. At 02:00, PO Ochoa says, "The logical explanation is he did a U-turn." CV3 says, "A U-turn? Ya didn't even see that!" § 87(2)(b) and CV1 say, "Stop beasting, Mo." CV1 says, "Why don't y'all just tell us what you pulled us over for. It's because we have ski masks on. You saw four niggas with ski masks on." PO Ochoa responds, "Nobody said that." Sgt. Cabrera stands next to the back passenger seat and shines his flashlight into the car through the open window. At 02:33, Sgt. Cabrera says, "Is there anything in the car we should know about, guys?" § 87(2)(b) and CV1 both respond while laughing and say, "This is an Uber!" § 87(2)(b) leans over CV1 towards Sgt. Cabrera and says, "This is an Uber. We are passengers. You can't search us, Mo. What are ya doin'?" § 87(2)(b) CV1, and CV3 speak loudly amongst themselves, however, their statements are inaudible because they are all speaking at once. CV3 pulls out his phone and begins to record from the front seat. At 02:49, Sgt. Cabrera attempts to open the back passenger door. CV3 says, "What are you

opening the door for?" PO Ochoa orders § 87(2)(b) to unlock the door three times. At 02:58, Sgt. Cabrera opens the back passenger door and PO Ochoa walks so that he is standing behind him. Sgt. Cabrera orders CV1 to step out, which he does. At 03:21, Sgt. Cabrera frisks CV1, however the camera does not capture where on CV1's person Sgt. Cabrera frisks because Sgt. Cabrera's body obscures PO Ochoa's camera. It is not clear if Sgt. Cabrera searches CV1. Nothing is recovered from CV1's person. At 03:41, CV1 turns around and Sgt. Cabrera frisks CV1 from behind, however, it is unclear where on CV1's body Sgt. Cabrera frisks because his person obscures PO Ochoa's camera. At 03:47, PO Ochoa stands at the rear of the vehicle with CV1. From 03:58 to 04:26, Sgt. Cabrera frisks § 87(2)(b) jacket pockets, waistband area, and legs on the passenger side behind the driver's seat. It is not clear if Sgt. Cabrera searches § 87(2)(b). Nothing is recovered from § 87(2)(b) person. At 04:30, § 87(2)(b) joins CV1 at the rear of the Uber. At 04:34, PO Ochoa walks to the individual in the rear passenger's side seat and opens the door. PO Ochoa asks CV2 to step out and he complies. Once he is out of the vehicle, CV2 stretches out his arms and says, "There is a bottle of weed on me, man. That's it." PO Ochoa's response is not audible. PO Ochoa frisks CV2's jacket pockets, waistband area, and legs and then tells him to stand at the rear of the vehicle. It is not clear if PO Ochoa searches CV2. Nothing is recovered from CV2's person. At 05:10, PO Ochoa stands at the rear of the vehicle with CV1, § 87(2)(b) and CV2. At 05:18, PO Flynn is captured frisking CV3 on the front passenger side of the vehicle. CV3, while standing outside of the front passenger side says, "I am recording this." PO Flynn and CV3 exchange words, however, what they say is inaudible. At 05:26, PO Flynn frisks CV3's legs and then tells him to step to the back of the vehicle. At 05:43, PO Ochoa opens the rear passenger door on the passenger side and searches the back passenger seat area on the right where CV2 sat, as well as the floor area. § 87(2)(b) remains in the driver's seat of the vehicle. PO Ochoa says to § 87(2)(b) "They didn't put anything in the car?" § 87(2)(b) responds, "No." At 06:11, PO Ochoa opens the front passenger door and searches the front passenger seat, floor area, and the center console. Nothing is recovered. At 06:32, PO Ochoa walks to the rear of the vehicle and says to § 87(2)(b) and his friends, "Alright step back in the car." At 07:02, Sgt. Cabrera hands PO Ochoa § 87(2)(b) identification. PO Ochoa hands § 87(2)(b) his identification and says, "Easy with the U-turns."

Sgt. Cabrera's BWC footage, which is 06:59 minutes in length, captures the entirety of his involvement in the incident (Board Review 02). Sgt. Cabrera's footage is generally consistent with PO Ochoa's regarding his initial approach of the vehicle and his interaction with CV1 and § 87(2)(b). At 02:31, Sgt. Cabrera says, "Anything in the car we should know about guys? Nothing illegal?" Sgt. Cabrera's camera is obscured by his jacket. § 87(2)(b) and CV1 respond, "This is an Uber." At 02:53, § 87(2)(b) and his friends ask Sgt. Cabrera why he was opening the door. Sgt. Cabrera responds, "We don't care about the weed, man." At 02:58, Sgt. Cabrera opens the back-passenger door and says, "Step out big guy... we don't care about the weed, brother." From 03:16 to 03:48, Sgt. Cabrera frisks CV1 and says, "You got the weed on you?" CV1 does not respond. Sgt. Cabrera's camera is obscured by his jacket while he frisks CV1, and it is unclear if he searches CV1's person. At 03:50, Sgt. Cabrera orders CV1 to step to the back of the vehicle and says, "Okay big man you're next" to § 87(2)(b). At 03:56, § 87(2)(b) exits the vehicle and puts his hands up. From 03:49 to 04:14, Sgt. Cabrera searches § 87(2)(b) front left and right jacket pockets. Nothing is recovered. Sgt. Cabrera then turns § 87(2)(b) around and frisks his waistband area and legs. At 04:21, Sgt. Cabrera finishes frisking § 87(2)(b) and says, "Alright, big man. Go back here with your boy." From 04:25 to the end of the footage, Sgt. Cabrera stands at the rear of the vehicle with § 87(2)(b) CV1, CV2, and CV3 until PO Ochoa concludes his search of the vehicle.

PO Flynn's BWC footage, which is 07:03 minutes in length, captures the entirety of his involvement in the incident (Board Review 03). At 00:47, PO Flynn exits the vehicle and approaches the Uber on the passenger side, stands near the back passenger side of the vehicle, and shines his flashlight into vehicle through the closed window. From 01:38 to 03:01, PO Flynn steps

forward and shines his flashlight into the front passenger seat of the vehicle. Sgt. Cabrera and PO Ochoa stand on the other side of the vehicle and speak to § 87(2)(b) CV1, and § 87(2)(b) however, their conversation is inaudible. At 03:07, CV3 says through the closed front passenger window, “You can search the passenger?” PO Flynn responds, “Yeah, of course you can, look at the law.” At 03:12, CV1 steps out of the vehicle on the opposite side. At 03:54, § 87(2)(b) steps out on the opposite side of the vehicle. At 04:02, CV3 has his phone and is recording. CV3 says, “Get everybody’s badge numbers.” The window on the front passenger side remains closed. At 04:04, PO Flynn says, “Yo, your boy is wilding out, man. He’s going to make us take everything you guys got and give summonses for everything. So, stop putting this on live and stuff.” CV3 looks through the closed window at PO Flynn and says, “What?” At 04:10, PO Flynn says, “If you keep recording, we’re going to put-we’re going to take-okay that’s fine.” At 04:14, CV3 rolls down the window and says, “What did you say?” PO Flynn responds, “You keep putting us on live and stuff we are going to take everything we find and give you summonses for everything.” CV3 responds, “What do you want to find? What do you want to find? What do you want to take? There’s no weapons there’s no drugs. So what do you want to take?” PO Flynn responds, “He already said he has drugs on him.” CV3 says, “So what are you talking about you going to take everything you find? What do you want to find? What are you talking about?” PO Flynn responds, “Why are you so heated? CV3 says, “Because ya get me tight. You have no reason to pull him over and why ya searching the passengers?” PO Flynn says, “It’s illegal to do a U-turn.” CV3 asks why they are searching the passengers and PO Flynn responds, “Because it smells like marijuana.” CV3 says, “Nobody in this car smokes.” PO Flynn says, “He just admitted to having it. That gives us full consent to search the car.” At 04:59, PO Flynn orders CV3 to get out of the car and tells him to “stop making it difficult.” CV3 responds, “No, you’re making it difficult.” CV3 steps out of the vehicle. PO Flynn orders CV3 to put his hands up and CV3 says, “Hold on, I am recording this.” PO Flynn orders CV3 to put his hands up a second time. CV3 repeats that he is recording this interaction and PO Flynn responds, “Alright well right now you’re being searched.” PO Flynn removes CV3’s hand from his jacket pocket and raises it. From 05:20 to 05:29, PO Flynn frisks CV3’s waistband area, pants pockets, chest, and legs. It is unclear if PO Flynn searched CV3. After PO Flynn finishes frisking CV3, he orders CV3 to step to the back of the vehicle. From 05:34 to 06:28, PO Flynn stands at the rear of the vehicle with Sgt. Cabrera, CV1, CV2, CV3 and § 87(2)(b) while PO Ochoa searches the right front and back passenger seat areas of the vehicle. After PO Ochoa concludes the vehicle search, PO Ochoa tells the four of them that they can get back into the vehicle. § 87(2)(b) and his friends get back into the vehicle and PO Flynn turns to walk towards the police vehicle.

PO Ochoa (Board review 06) testified § 87(2)(b) rolled down his window all the way as he approached the driver’s side. PO Ochoa immediately detected the smell of burnt marijuana coming from inside of the vehicle. PO Ochoa asked for § 87(2)(b) license and registration and § 87(2)(b) provided it to him. PO Ochoa observed three male passengers, one of which was § 87(2)(b) in the back seat and one male passenger in the front passenger seat. Once PO Ochoa had § 87(2)(b) documents, PO Ochoa explained to § 87(2)(b) that he was being stopped because he had made a U-turn. PO Ochoa asked § 87(2)(b) if he thought the car smelled like marijuana. CV1, who was seated directly behind the § 87(2)(b) told PO Ochoa that they had just smoked. PO Ochoa did not observe any marijuana in the vehicle. None of the other passengers admitted to smoking marijuana. PO Ochoa asked the passengers to step out of the vehicle because he needed to search them and the vehicle for marijuana. The driver was not asked to step out of the vehicle because CV1 had admitted to just having smoked. PO Ochoa could not recall which passenger he frisked but remembered that he frisked the pocket areas of that person. PO Ochoa did not search this person. PO Ochoa could not recall which passenger’s PO Flynn or Sgt. Cabrera searched. Marijuana was not recovered from any of the passengers. The driver remained in the vehicle while all of the passengers were searched. After the passengers were searched, they stood at the rear of the vehicle. PO Ochoa proceeded to search the floors of the back

passenger seat area as well as in between the seats for marijuana. PO Ochoa also searched the front seat and floor of the front passenger area. PO Ochoa did not recover any marijuana inside of the vehicle. After PO Ochoa finished searching the vehicle, he instructed § 87(2)(b) CV1, CV2, and CV3 to get back into the vehicle. PO Ochoa, PO Flynn, and Sgt. Cabrera walked back to their vehicle and left the location. No one was issued a summons because PO Ochoa, Sgt. Cabrera, and PO Flynn used their discretion.

Sgt. Cabrera's (Board Review 07) testimony was generally consistent with PO Ochoa's regarding the initial observation of the vehicle infraction. Upon approach, Sgt. Cabrera detected a strong odor of unburnt marijuana emanating from the back seat of the vehicle. Sgt. Cabrera reached the driver's side door and observed four passengers in the back seat, the driver, and one passenger in the front passenger seat. The windows on the passenger side were rolled down. PO Ochoa spoke with § 87(2)(b) however, Sgt. Cabrera could not recall their conversation. The occupants were making statements to the Sgt. Cabrera, PO Ochoa, and PO Flynn; however, Sgt. Cabrera could not recall what they specifically said. Sgt. Cabrera recalled trying to keep the occupants calm and telling them, in sum in substance, that it was not a big deal, but the car smelled like marijuana and/or that he knew they had marijuana in the vehicle. Sgt. Cabrera could not recall if he had any conversation with PO Ochoa or PO Flynn about the odor of marijuana. Sgt. Cabrera asked the occupants to step out of the vehicle so he could see where the odor of marijuana was coming from. The passengers complied and exited the vehicle. Sgt. Cabrera could not recall which individuals he frisked and searched but stated that he did so because of the odor of marijuana. Sgt. Cabrera did not recall if anything was recovered from the frisk and the search. Sgt. Cabrera could not recall who frisked and searched the other two occupants. The driver of the vehicle was not asked to step out of the vehicle because the odor of marijuana was coming from the passengers. After § 87(2)(b) and his friends were frisked and searched, they were instructed to go to the rear of the vehicle while PO Ochoa searched the vehicle. Sgt. Cabrera and PO Flynn stood with the individuals while PO Ochoa searched the vehicle. Sgt. Cabrera did not recall where in the vehicle PO Ochoa searched. PO Ochoa did not recover anything from the vehicle search. After PO Ochoa finished searching the vehicle, Sgt. Cabrera told the individuals that they could get back in the car. The officers did not issue a summons for the VTL infraction because they collectively decided to use their discretion.

Sgt. Cabrera was shown his BWC footage from 03:17 to 03:31, which showed Sgt. Cabrera's jacket obscuring his camera while he frisked CV1 and § 87(2)(b). After reviewing the footage, Sgt. Cabrera confirmed that he frisked and searched CV1 and § 87(2)(b) for marijuana (Board Review 02, 07).

PO Flynn's (Board Review 08) testimony was generally consistent with PO Ochoa and Sgt. Cabrera's regarding their initial observations of the U-turn. PO Flynn approached on the passenger side of the vehicle. PO Flynn could not recall if the windows were up or down. PO Flynn shined his flashlight into the front passenger area. PO Flynn stated that he did not detect the odor of marijuana, but that PO Ochoa had alerted him to it. PO Flynn could not recall how PO Ochoa alerted him to the possible presence of marijuana. PO Flynn was specifically focused on CV3, who had a ski mask on. PO Flynn asked CV3 to step out of the vehicle because he observed PO Ochoa asking the other passengers to step out of the vehicle. CV3 exited the vehicle and PO Flynn frisked him because he wanted to ensure that he did not have any weapons on his person before escorting him to the rear of the vehicle. PO Flynn stated that it is procedure for a passenger to be frisked if they are removed from the vehicle for marijuana. Nothing was recovered from the frisk. PO Flynn could not recall if he searched CV3. PO Flynn did not observe PO Ochoa or Sgt. Cabrera frisk or search the other individuals. After frisking CV3, PO Flynn ordered him to go to the rear of the vehicle. PO Flynn stood at the rear of the vehicle with the occupants while the vehicle was searched. PO Flynn could not recall if it was Sgt. Cabrera or PO Ochoa who searched the vehicle. Nothing was recovered



from the vehicle. After the vehicle search concluded, the occupants were instructed to get back into the vehicle.

A request for stop reports that were prepared as a result of this incident was returned with negative results (Board Review 20).

Sgt. Cabrera, PO Ochoa, and PO Flynn did not record this incident in their memo books (Board Review 15).

In People v. Chestnut, 43 A.D.2D 260, the Supreme Court of New York held that the smell of marijuana, with nothing more, can be sufficient to provide officers with probable cause to search an automobile and its occupants (Board Review 10).

The BWC footage shows Sgt. Cabrera frisking CV1 and frisking and searching § 87(2)(b) PO Ochoa frisking CV2, PO Flynn frisking CV3, and PO Ochoa searching the vehicle. Sgt. Cabrera's BWC footage showed him asking § 87(2)(b) CV1, CV2, and CV3, if there was anything in the car he should know about, and he also acknowledged searching CV1. PO Ochoa's BWC captured CV2 acknowledging having a "bottle" of marijuana on his person, although the footage does not show if PO Ochoa recovered anything from his person. Sgt. Cabrera stated that he detected the odor of unburnt marijuana, which is why he frisked and searched CV1 and § 87(2)(b) PO Ochoa testified that he detected the odor of burnt marijuana, which was his reason for frisking CV2 and searching the vehicle. PO Flynn did not recall whether he detected the odor of marijuana, but that PO Ochoa had alerted him to the possible presence of it in the vehicle.

§ 87(2)(g) . However, there are some inconsistencies between the officers' statements and available evidence that call into question this alleged observation. PO Ochoa testified that he smelled burnt marijuana whereas Sgt. Cabrera testified that he smelled the odor of unburnt marijuana and PO Flynn stated that he did not sense the odor of marijuana and was alerted to its presence by another officer. § 87(2)(b) who is an independent victim as well as a witness, denied that there was any odor of marijuana. Further, the officers did not make any contemporaneous statements captured in BWC about smelling marijuana prior to CV2's admission. While CV2 admitted that he was in possession of marijuana, this admission could not form the sole basis for the searches as the admission occurred after the officers had commenced their search of the vehicle and its occupants.

There are, additionally, actions that call into question whether the officers' frisks and searches were actually an attempt to locate marijuana. Although CV2 admitted being in possession of marijuana, PO Ochoa does not make any attempt to retrieve this contraband from his person. The BWC also depicts Sgt. Cabrera telling the civilians that they do not care about the marijuana they might have in their possession.

§ 87(2)(g)  
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**Allegation (K) Abuse of Authority: Police Officer Kenneth Flynn threatened to seize an individual's property.**

**Allegation (L) Abuse of Authority: Police Officer Kenneth Flynn threatened to issue summonses to an individual.**

**Allegation (M) Abuse of Authority: Police Officer Kenneth Flynn interfered with an individual's use of a recording device.**

Allegations K-M were captured on BWC footage and not alleged by § 87(2)(b)

As mentioned above, PO Flynn's BWC footage captured his entire interaction with CV3 (Board Review 03). At 04:02, CV3, who is still seated in the front passenger seat, has his phone and is recording. CV3 says to the other passengers, "Get everybody's badge numbers." The window on the front passenger side remains closed. At 04:04, PO Flynn says, "Yo, your boy is wilding out, man. He's going to make us take everything you guys got and give summonses for everything. So, stop putting this on live and stuff." CV3 looks through the closed window at PO Flynn and says, "What?" At 04:10, PO Flynn says, "If you keep recording, we're going to put—we're going to take—okay that's fine." At 04:14, CV3 rolls down the window and says, "What did you say?" PO Flynn responds, "You keep putting us on live and stuff we are going to take everything we find and give you summonses for everything."

In PO Flynn's statement to the CCRB (Board Review 08), PO Flynn initially stated that CV3 was yelling about being stopped and was recording the interaction on his cellphone. PO Flynn asked CV3 to stop filming him because he believed that only bystanders could record an active investigation. PO Flynn told CV3 that if the officers found marijuana in the vehicle, the civilians could be summonsed for it. PO Flynn was shown his BWC footage, located in Board Review 03 beginning at 04:03, which contains the portion of the incident noted above. After reviewing the footage, PO Flynn remained that § 87(2)(b) CV1, CV2, and CV3 could have been issued summonses for marijuana at that time. PO Flynn did not recall if any marijuana had been recovered at that point. PO Flynn stated that he asked CV3 to stop recording because he was the subject of an investigation, and he was impeding the investigation by recording.

New York Penal Law 221.05 states that a person is guilty of unlawful possession of marijuana when he knowingly and unlawfully possesses marijuana (Board Review 11).

NYPD Administrative Guide Procedure 304-21 states that individuals have a right to lawfully observe and/or record police activity including, but not limited to, detentions, searches, arrests or uses of force. The right to lawfully observe and/or record police activity extends to individuals in public places such as streets, sidewalks, and parks, as well as private property in which the individual has a legal right to be present, such as buildings, lobbies, workplaces or an individual's own property. This right to observe and/or record police action can be limited for reasons such as the safety of officers or other member of the public, or when a violation of law is committed by the individual(s) who are observing/recording. DO NOT [emphasis in the original] command an individual cease recording when an individual is authorized to do so under law (Board Review 12).

PO Flynn testified that he told CV1 that he would "take everything" and issue summonses "for everything" because if marijuana was recovered from their persons and the vehicle, it could be confiscated, and they could receive summonses. The BWC shows CV2 disclosing to PO Ochoa that he had marijuana on his person prior to PO Flynn making that statement. In his BWC footage, PO Flynn is captured citing to CV3 that CV2 acknowledged having drugs on him.

Even though CV2 admitted to having contraband, none of the officers made an effort to search for it or confiscate it. Further, PO Flynn's statement was made after the officers had searched the vehicle and civilians and recovered no contraband. At the time the threats were made, no officer had made any attempt to summons, arrest, or otherwise indicate that the civilians had committed a criminal infraction. Although PO Flynn cited the possible presence of marijuana as his reason for making the statement, the video evidence shows PO Flynn's statements about property seizure and threat to summons are a direct result of CV3 verbally and physically demonstrating that he was recording the incident and instructing the other passengers to obtain the officers' identifying information. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (N) Abuse of Authority: Sergeant Gerson Cabrera failed to provide individuals with a business card.**

**Allegation (O) Abuse of Authority: Sergeant Gerson Cabrera failed to provide § 87(2)(b) with a business card.**

**Allegation (P) Abuse of Authority: Sergeant Gerson Cabrera failed to provide § 87(2)(b) with a business card.**

**Allegation (Q) Abuse of Authority: Police Officer Alejandro Ochoa failed to provide individuals with a business card.**

**Allegation (R) Abuse of Authority: Police Officer Alejandro Ochoa failed to provide § 87(2)(b) with a business card.**

**Allegation (S) Abuse of Authority: Police Officer Alejandro Ochoa failed to provide § 87(2)(b) with a business card.**

**Allegation (T) Abuse of Authority: Police Officer Kenneth Flynn failed to provide individuals with a business card.**

**Allegation (U) Abuse of Authority: Police Officer Kenneth Flynn failed to provide § 87(2)(b) with a business card.**

**Allegation (V) Abuse of Authority: Police Officer Kenneth Flynn failed to provide § 87(2)(b) with a business card.**

§ 87(2)(b) § 87(2)(b) CV1, CV2, and CV3 did not receive business cards from Sgt. Cabrera, PO Ochoa, or PO Flynn (Board Reviews 04, 05).

Sgt. Cabrera (Board Review 07) testified that he did not provide them with business cards because they did not request one, PO Ochoa (Board Review 06) could not recall if he provided them with a business card, and PO Flynn (Board Review 08) stated that the circumstance did not require him to provide a business card.

NYPD Patrol Guide Procedure 203-09 states that officers are required to offer a business card at the conclusion of the following law enforcement activities, except in cases when a summons is issued or an arrest is made, as follows: noncustodial questioning of individuals suspected of criminal activity; a stop where an officer has an individualized, reasonable suspicion that the person stopped has committed, is committing, or is about to commit a crime and where a reasonable person would not feel free to end the encounter; frisk and/or a search of persons or property, roadblock or checkpoint stops, including checkpoints related to enforcement of Article 31 of the Vehicle and Traffic Law (Alcohol and Drug-Related Offenses), but not including planned security checks of vehicles sensitive locations or street closures for public events or emergencies, and a home search (Board Review 13).

NYC Administrative Code 14-174 outlines law enforcement activities in which officers are required to provide business cards. Number four is search of persons or property, including vehicles. The code further states that officers are to offer a business card to such person at the conclusion of any such activity that does not results in an arrest or summons (Board Review 14).

§ 87(2)(g), § 87(4-b)

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§ 87(2)(g), § 87(4-b)

### Civilian and Officer CCRB Histories

- § 87(2)(b)
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
- Sgt. Cabrera has been a member of service for 11 years and has been named a subject in five CCRB complaints and 19 allegations, of which three were substantiated.
  - 201607782 involved substantiated allegations of a search of person, § 87(2)(g) [REDACTED]. The Board recommended instructions and the NYPD imposed instructions, § 87(2)(g) [REDACTED].
- PO Ochoa has been a member of service for eight years and has been named a subject in three CCRB complaints and nine allegations, of which one was substantiated.
  - 202006904 involved a substantiated allegation of a failure to provide RTKA card. The Board recommended Command Discipline A and the NYPD imposed Command Discipline A. § 87(2)(g) [REDACTED].
- PO Flynn has been a member of service for six years and has been named a subject in two CCRB complaints and three allegations, none of which were substantiated.

### Mediation, Civil, and Criminal Histories

- Due to the mediation moratorium, mediation was not offered to § 87(2)(b) [REDACTED].
- As of July 28, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (Board Review 18).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]

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Squad: 3

Investigator: Charis Jones Inv. Charis Jones 06/01/2022  
Signature Print Title & Name Date

Squad Leader: Carlmais Johnson IM Carlmais Johnson June 8, 2022  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date